

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *JE* D.C.  
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WILLIE L. GATEWOOD,  
Plaintiff,

vs.

OFFICER DANIEL MILLER, et al.,  
Defendants.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

No. 04-2236-Ma/An

THOMAS H. COULD  
CLERK, U.S. DISTRICT COURT  
WD OF TN, MEMPHIS

ORDER CORRECTING THE DOCKET  
ORDER OF DISMISSAL  
AND  
ORDER TO SEND JUNE 29, 2004 ASSESSMENT ORDER  
TO PLAINTIFF'S CURRENT PRISON

Plaintiff Willie L. Gatewood, Tennessee Department of Correction ("TDOC") prisoner number 99852, who was, at the time he commenced this action, an inmate at the Northwest Correctional Complex ("NWCX") in Tiptonville, Tennessee, filed a pro se complaint pursuant to Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), in the Eastern Division of this district on January 22, 2004, along with an application to proceed in forma pauperis. The action was transferred to this division by order dated March 24, 2004. On June 29, 2004, the Court issued an order that, inter alia, assessed the civil filing fee and ordered the clerk to issue process and the marshal to effect service on the defendants. On October 7, 2004, defendant Daniel Miller, through counsel, filed a motion to dismiss the claims against him pursuant to Fed. R. Civ. P. 12(b)(6). On October 13, 2004, the Memphis Police Department filed a motion to

dismiss the claims against it pursuant to Fed. R. Civ. P. 12(b)(6). On November 18, 2004, defendant Sandlin filed a motion to dismiss the claims against him pursuant to Fed. R. Civ. P. 12(b)(6). Because the filing of these motions coincided with the plaintiff's release from prison, the Court issued an order on February 8, 2005 that, inter alia, directed the defendants to serve the motions on the plaintiff at his new address and directed the plaintiff to show cause, within forty-five (45) days, why the defendants' motions should not be granted. The Court issued a second order on February 8, 2005 directing the plaintiff, within thirty (30) days, to file a nonprisoner in forma pauperis affidavit or remit the civil filing fee.

On February 10, 2005, defendant Miller, through counsel, filed notice that he had served his motion to dismiss on the plaintiff. On March 23, 2005, the Memphis Police Department renewed its motion to dismiss, which had been served on the plaintiff at his address of record. On April 8, 2005, defendant Sandlin renewed his motion to dismiss, which was served on plaintiff at his address of record. To date, the plaintiff has not responded to any of these motions to dismiss. He also has not filed a nonprisoner in forma pauperis affidavit, as required by the Court's February 8, 2005 order. The orders issued on February 8, 2005 were not returned by the post office and, therefore, it is reasonable to assume they were received. As the plaintiff has apparently abandoned this case, it is DISMISSED with prejudice, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

The plaintiff's current whereabouts are not a mystery. According to the TDOC website, the plaintiff is currently incarcerated at the Shelby County Detention Center ("SCDC"). The Clerk is, therefore, ORDERED to correct the docket to reflect the plaintiff's current address. As the plaintiff's RNI number is unknown, the plaintiff's address shall include his TDOC number.<sup>1</sup> The Clerk is further ORDERED to transmit copies of this order and the June 29, 2004 assessment order to the inmate trust fund officer at the SCDC and the Director of that institution in order to ensure that the filing fee is paid.

IT IS SO ORDERED this 24<sup>th</sup> day of August, 2005.



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SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The plaintiff promptly notified the Clerk of his release from prison. Under these circumstances, his failure to notify the Clerk of his re-incarceration indicates an intention to abandon this action.



## Notice of Distribution

This notice confirms a copy of the document docketed as number 41 in case 2:04-CV-02236 was distributed by fax, mail, or direct printing on August 26, 2005 to the parties listed.

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Honorable Samuel Mays  
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